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No.

In the

Supreme Court of the United States

STANLEY K. YOUNG,

Petitioner,

v.

NEW HAVEN ADVOCATE, GAIL THOMPSON, CAMILLE JACKSON, HARTFORD COURANT, BRIAN TOOLAN and AMY PAGNOZZI,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Fourth Circuit's jurisdictional analysis, in which the exercise of jurisdiction is determined by the level of interactivity and commercial nature of the exchange of information that occurs on the Internet, and whether or not the out of state persons who place information on the Internet manifest and intent to aim their websites or posted articles at a Virginia audience violate the traditional due process principles of personal jurisdiction.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE STATEMENT

Stanley K. Young is an individual and not a corporate entity.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Stanley K. Young, respectfully prays that a writ of certiorari be issued to review the judgment of the United State Court of Appeals for the Fourth Circuit in this case.

OPINIONS AND ORDER BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is reported at F. 315 3d. 256 (4th Cir. 2002) (App 1a). The opinion for the United States District Court for the Western District of Virginia, Big Stone Gap Division is reported at 184 F. Supp. 2d 498 (W.D. Va. 2001). (App.15a)

JURISDICTION

The decision of the United States Court of Appeals was issued on December 13, 2002. This petition for a writ of certiorari is timely filed under Rule 13 of the Rules of the Supreme Court of the United States as it has been filed within ninety (90) days of the entry of judgment by the Court of Appeals. This Court has jurisdiction over this petition under 28 U.S.C. §1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Constitution, Amendment V: no person shall be... deprived of life, liberty, or property, without due process of law; ...

United States Constitution Amendment XIV §1: all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. The Plaintiff (Petitioner), Stanley K. Young, The Warden of Wallens Ridge State Prison, ("Wallens Ridge"), in Big Stone Gap, Virginia, initiated this action alleging defamation against the Respondents (Defendants), *The New Haven Advocate*, (hereinafter referred to as the "Advocate") and *TheHartford Courant*, (hereinafter referred to as the "Courant")[1] *along* with an individual editor and columnist for each newspaper based on diversity of citizenship. On October 4, 2000, the Newspapers, filed a motions to dismiss for lack of jurisdiction pursuant to Federal Rules and Civil Procedure 12 (B) (2). On January 26, 2001, Mr. Young filed his Brief in Opposition of Defendant's Motion to Dismiss for Lack of Jurisdiction. On February 28, 2001, The Newspapers filed Reply Briefs and oral argument was heard on this issue on March 15, 2001.

On August 9, 2001, the District Court issued an Order with an accompanying Memorandum Opinion denying the Newspapers' motions, finding jurisdiction proper under the Virginia long-arm statute, §8.01-328.1

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[1] It should be noted that the Hartford Courant's parent corporation, The Tribune Companies Cable Network, WGN reaches, solicits and advertises to Virginia residents.

(A) (3), and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The District Court's exercise of personal jurisdiction was over the Defendant was premised upon the Defendant's Connecticut-based Internet activities constituting an act leading to an injury to the Plaintiff in Virginia. Young v New Haven Advocate, 184 F. Supp. 2d 498 (W.D. Va 2001) (App. 15a)

Following a motion for certification to pursue an interlocutory appeal, the District Court on October 15, 2001, issued an Order certifying its August 9, 2001, Order for interlocutory appeal. On November 13, 2001, the United States Court of Appeals for the Fourth Circuit granted the petition of the Newspapers for review pursuant to 28 U.S.C. § 1292 (b) and Rule 5 of the Federal Rules of Appellate Procedure.

On December 13, 2002, The United States Court of Appeals for the Fourth Circuit issued an opinion which reversed the District Court's Order denying the newspaper's (Defendants) motion to dismiss for lack of personal jurisdiction. Young v New Haven Advocate, 315 F. 3d 256 (4th Cir. 2002) (App.1a)

SUMMARY OF ARGUMENT

B. The Petitioner moves this Honorable Court to grant a Writ of Certiorari in this case in regards to reversing the decision of the United States Fourth Circuit Court of Appeals in this matter.

The United States District Court for the Western District of Virginia in denying Respondent's motion to dismiss for lack of personal jurisdiction found several cases to be instructive.

The District Court found the decision in Telco v An Apple a Day, to be instructive. Specifically, in Telco the Court relied on the decision in First America First

where the Court determined that the primary and most devastating effects of mailing libelous letter directed at the Virginia Plaintiffs would be experienced in Virginia. Telco Communication Group, Inc. v An Apple a Day, Inc., 977 F. Supp. 404 (E.D. Va. 1997) (Id. at 407) (citing First American First, 802 F.2d at 1517). Specifically, the Telco Court held, " defamation, like libel, occurs wherever the offensive material is circulated or distributed." (Id. at 408) The District Court found Telco instructive in that the Connecticut newspapers purposely directed their activities at Warden Young in Virginia. The District Court claimed, "In the instant case, harm to Young's reputation, if any, occurred primarily in Virginia, as he is a resident of Virginia. The articles published on the Connecticut newspapers' website were focused on the prison system in Virginia where Young was employed as a Warden. The articles mentioned Young or at the very least alluded to Young." Young v New Haven Advocate, 184 F. Supp. 2d 498, 508 (App. 32a)

This is the crux of petitioner's argument in that the Respondent purposely availed themselves to Virginia jurisdiction by making Virginia the focal point of their articles and that the Calder "effects test" should be adopted to determine Internet jurisdiction.

The District Court also found, the Defendants activities on the Internet, which were ultimately accessed in Virginia, were not "random, isolated or fortuitous." citing Keeton, 465 U.S. at 773 184 F. Supp. 2d 498, 508. (App. 33a) Thus, the District Court concluded, " The Defendant by posting allegedly defamatory articles on Internet websites accessible twenty-four hours a day in Virginia, conducted an act or omission within Virginia sufficient for this Court to confer jurisdiction over them in this case." Id. at 508 (App. 33a) Hence, Petitioner Young, argues that under Telco and other case law, defamation in this case

constitutes " an act or omission causing tortuous injury in the Commonwealth" to satisfy Va. Code 8.01-328.1 (A) (3) and allowing Young to exercise jurisdiction over the Connecticut newspapers.

Most important is the District Court's reliance upon the Supreme Court Decision in Calder v Jones, 465 U.S. 783. (1984). This is important in satisfying the Due Process requirements of the Constitution. In regards to the necessary minimum contacts with the Commonwealth of Virginia, the Respondents tried to distinguish themselves from the Defendants in the case of Calder v. Jones by claiming that they did not intentionally aim their activities towards Young, a Virginia resident. Warden Young and the District Court Judge both strongly disagree with this argument. The Honorable Glenn M. Williams, of the United States District Court for the Western District of Virginia, makes a clear factual finding that "each of the articles published on the newspapers Internet websites characterized the conditions of the Virginia correctional system, alluded to the Virginia Plaintiff or described the Plaintiff's office which was located in Virginia." Id. at 508 (App. 33a) "The Defendants were all well aware of the fact that the Plaintiff was employed as a Warden within the correctional system and resided in Virginia." Id. at 508 (App. 33a) "Therefore, the Defendants also should have been aware that any harm suffered by Young from the circulation of these articles on the Internet would primarily occur in Virginia." See Calder v Jones, 465 U. S. at 788-90. (App. 33a)

The Calder "effects test" is very important for it ultimately destroys the Respondents attempt to use "scare tactics" to manipulate the Court into thinking that the mere posting of the information on the Internet would be enough to subject someone to worldwide jurisdiction.

The District Court also found instructive the Fourth Circuit's most recent decision in Christian Science Board of Directors of the First Church of Christ v Nolan, 259 F. 3d 209 (4th Cir. 2001) In summary, the fundamental question before the Nolan Court as well as the question most relevant in the current case in issue was whether the Defendants contacts with the forum state were sufficient to support a District Court's exercise of personal jurisdiction. In Nolan, the Court determined that the Defendants' contacts with North Carolina were insufficient for the Court to exercise general jurisdiction over them. Thus, the Fourth Circuit centered its analysis around the exercise of specific jurisdiction and concerns of constitutional due process. In doing so, this Court examined three factors set forth in the Supreme Court case of Burger King v Rudzewicz to determine whether the exercise of specific jurisdiction was proper: (1) to what extent did the Defendants "purposely avail" themselves of the privileges of conducting activities in the forum state thereby invoking the benefits and protections of the laws of that state; (2) whether or not the present claim arose out of activities related to the forum state; and (3) was the exercise of personal jurisdiction constitutionally "reasonable." Id. (citing Burger King Corp. v Rudzewicz, 471 U.S. 462, 472, 476-77 (1985). Applying the same three (3) criteria cited in Burger King, the District Court in the case concluded that the exercise of personal jurisdiction over the case at hand does not offend traditional notions of due process. Id. at 509, 510 (App. 34a, 35a)

The District Court in the Young case determined that the facts of Young as discussed herein were sufficient to satisfy the first condition of "purposely availment". The Defendants' published and circulated articles on their websites concerning the ongoing controversy surrounding the policy of sending

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Connecticut prisoners to correctional facilities in Virginia. The Plaintiff was a Warden in the Virginia correctional system. The allegedly defamatory news articles originated from the controversial policy and the Plaintiff's relationship to the Virginia correctional system. Thus, the Court then concluded that " like the Defendants' in Nolan, the present Defendants were well aware that any potentially tortuous content published and circulated on their websites could be physically uploaded by a Virginia resident working on a Virginia computer. (App. 37a) Thus, the District Court concludes that the Defendants' acts were not fortuitous or unintentional. There is no dispute in this case that the posting of news articles on the Internet gave rise to present litigation. Thus, the second condition of Nolan is satisfied". (App. 37a) In conclusion, in turning to the question of constitutional reasonableness, the District Court also relied on Nolan. The District Court stated that, "similar to the Defendants in Nolan, defending a suit in a Virginia Court may inconvenience the Connecticut Defendants, but it does not violate traditional notions of due process. Morever, Virginia has a significant interest in deterring the posting of defamatory materials concerning one of its citizens, especially a citizen employed within the Virginia correctional system, on the Internet. Thus, this Court can properly exercise personal jurisdiction without offending traditional notions of constitutional due process." Young v New Haven Advocate, 184 F. Supp. 2d 498 (2001) (App. 37a, 38a)

C. On December 13, 2002, the United States Court of Appeals for the Fourth Circuit reversed the opinion of The District Court and based their decision on their recent decision in ALS Scan, Inc. v Digital Service Consultants, Inc., 293 F. 3d. 707 (4th Circuit 2002). The Court stated that the ALS Scan case supplied the standard for determining a Court's

authority to exercise personal jurisdiction over an out of state person who places information on the Internet and that applying this standard we hold that a Court in Virginia can not constitutionally exercise jurisdiction over the Connecticut-based newspaper Defendant's because they did not manifest and intend to aim their websites or their posted articles at a Virginia audience. Young v New Haven, 315 F. 3d 256 (4th Cir. 2002) (App. 1a) The Court reversed the District Court's order denying the Defendant's motion to dismiss for lack of personal jurisdiction.

It is the Fourth Circuit's opinion in this matter as well as their decision in the case of ALS Scan, Inc. v Digital, 293 F. 3d 707 (4th Cir. 2002) which adopted and adapted the Zippo model from Zippo Manufacturing Co. v Zippo Dot Com, Inc. 952 F. Supp. 1119 (W.D. Pa. 1997) and states that the "likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet", ALS Scan at 708, that is one of the basis' for the Petitioner's Writ of Certiorari to this Honorable Court. The Petitioner respectfully states that the United States Court of Appeals for the Fourth Circuit erred in reversing the District Court Judge's opinion in regards to the newspaper Defendants motion to dismiss for lack of jurisdiction in applying the standard that the Fourth Circuit set out in the case of ALS Scan v Digital, specifically, the Court erred in adapting and adopting the Zippo model. Where the adopted and adapted Zippo model was set up in the Fourth Circuit the Court concludes, " that a state may consistent with due process exercise judicial power over a person outside of the state when that person 1. Directs electronic activity into the State, 2. With the manifested intent of engaging in business or other interactions within the state, and 3. That activity creates, in a person within the state, a

potential cause of action cognizable in the states Court." ALS Scan v Digital Service Consultants, 293 F. 3d 707 (4th cir. 2002) This is a strict commercial standard which is not practical in defamation tort type cases and conflicts with this Honorable Court's opinion in Calder v Jones

REASONS FOR GRANTING WRIT

1. The Internet. The modern concept to personal jurisdiction has solely evolved from the days of Pennoyer v Neff, 1877 to International Shoe in 1945, Worldwide Volkswagen and Asahi in the 1980's into a world of well-defined and recognized borders. Kevin R. Lyn, "Personal Jurisdiction and the Internet: Is a Home Page Enough to Satisfy Minimum Contacts", 22 Campbell L. Rev 341 (Spring 2000) In the 1980s and 1990s, a new virtual world called the Internet has emerged. This entity is lacking the physical boundaries which clearly define the physical world. The Internet is a global phenomenon which has developed without governing or a controlling body of law from its inception. Id. at 366 Due to the exposing growth of the Internet and its technology, which are progressing by leaps and bounds on a daily basis, the courts have been caught off guard and are currently updating jurisprudence to account for this change. Id. at 366 The Internet is significantly complex and are many intricacies and subtleties which do not lend themselves to the extreme generalities used to describe it. Learning the basic technology of the Internet, not to mention as many complexities, presents a formal task for the judiciary. Id. at 366

What is certain however is that real world tortuous conduct can occur, does occur, and does cause real injury over the Internet. Without physical boundaries to define its limits the Internet is confusing

for the courts even in the basic determination of personal jurisdictions.

2. THE FOURTH CIRCUIT'S ANALYSIS

The Fourth Circuit erroneously states in their opinion that Warden Young argues that Calder requires a finding of jurisdiction in this case simply because the newspapers posted articles on the Internet websites that discuss the Warden and his Virginia prison, and he would feel the effects of any libel in Virginia, where he lives and works. The Fourth Circuit then states that Calder does not sweep that broadly and refers to the case of ESAB Group, Incorporated v Centricut, Incorporated in which the Court emphasized how important it is in the light of Calder to look at whether the Defendant has expressly aimed or directed its conduct toward the foreign state. Young v New Haven Advocate, 315 F. 3d 256, 262 (4th Cir. 2002) (App. 11a) The Court said, "Although the place that the Plaintiff feels the alleged injury is plainly relevant to the [jurisdictional] inquiry, it must ultimately be accompanied by the Defendant's own [sufficient minimum] contacts with the state if jurisdiction... is to be upheld." Id. at 262, 263. (App. 11a) We thus had no trouble concluding in ALS Scan that application of Calder and the Internet context requires proof that the out of state Defendant's Internet activity is expressly targeted at or directed to a foreign state. Id. at 262, 263 (App. 11a) It is here that the Fourth Circuit erred, clearly the District Court in the opinion written by The Honorable Glen Williams felt that the Defendant's internet activity in being written about an employee of the State of Virginia, a resident of the State of Virginia who works for the State of Virginia in a correctional facility located in Virginia and about events and activities taken place in Virginia was enough to indicate

that this article was targeted at Virginia and that Virginia was, in fact, the focal point of the articles.

The Fourth Circuit disagreed with the district Court's opinion in Young and relied on the standard set for in ALS Scan to reach its conclusions.

In ALS Scan, the Court adopted a traditional standard establishing specific jurisdiction so that the Court tried to adopt the traditional standard for establishing specific jurisdiction so that it would make sense in the Internet context. "The Fourth Circuit concluded that a state may, consistent with due process, exercise judicial power over a person outside of a state when that person (1) directs electronic activity into the state, (2) with the manifested intent of engaging in business or other interactions within the state, and (3) the activity creates, in a person within the state, a potential cause of action cognizable in the state's Court" ALS Scan, 293 F. 3d, 707, 714. (App. 11a)

Young argues this is an incorrect standard and an issue that the Supreme Court needs to set out. Ominously, the United States Court of Appeals for the Fourth Circuit in the ALS Scan opinion stated prior to adopting and adapting the Zippo test that "until the due process concepts of personal jurisdiction are reconceived and rearticulated by The Supreme Court in light of advances in technology, we must develop under existing principles, the more limited circumstances when it can be deemed than an out of state citizen, through electronic contacts has conceptually 'entered' the state via the Internet for jurisdictional purposes." ALS Scan at 715.

The Petitioner agrees that the mere placing of information on the Internet is not sufficient by itself to subject that person to personal jurisdiction in each state in which the information is accessed. Petitioner feels that in this situation due to the fact of Virginia being the focal point of the alleged defamatory articles about him

that the Defendant's in this action "purposely directed [their]activity in a substantial way to the foreign state", which is Virginia. Panavision International L.P. v Toeppen 141 F. 3d 1316 (9th Cir. 1998)

3. THE FOURTH CIRCUITS DECISION IS IN CONFLICT WITH THE DECISIONS OF THIS COURT

As previously stated, the District Court relied upon the Supreme Court decision of Calder v Jones 465, US 783, 1984. Calder is important in satisfying the due process requirements of the Constitution in regards to the necessary minimum contacts with the Commonwealth of Virginia.

The District Court also relied upon the three factors set forth in the Supreme Court decision in Burger King to determine whether to exercise a specific jurisdiction was proper: 1. To what extent did the Defendant's "purposely avail" themselves or the privileges of conducting activities in a foreign state thereby invoking the benefits and protections of the laws of that state; 2. Whether or not the present claim arose out of activities related to the foreign state; 3. Was the exercise of personal jurisdiction constitutionally "reasonable". Burger King Corp. v Rudzewcz 471 U.S. 462,472,476-77, 1985.

The District Court applied the Calder "Effects Test" and the criteria set forth in this Honorable Court's decision in Burger King v Rudzewcz. The Fourth Circuit in contrast to the District Court's opinion makes a conclusive statement that "Our recent decision in ALS Scan, Inc. v Digital Service Consultants supplies a standard for determining a Court's authority to exercise personal jurisdiction over an out of state person who places information on the Internet. Applying that standard, "we hold that a Court in Virginia can not constitutionally exercise jurisdiction over a Connecticut

based newspaper Defendants because they did not manifest and intent to aim their websites or posted articles at a Virginia audience." Young v New Haven Advocate, 315 F. 3d 256 (4th Cir. 2002) (App. 13a, 14a)

The Court then made note that Warden Young had based his argument on the Supreme Court case Calder v Jones.

In Calder, a California actress brought suit against, among others, two Floridians, a reporter and an editor who wrote and edited in Florida a National Enquirer article claiming that the actress had a problem with alcohol. The Supreme Court held that California had jurisdiction over the Florida resident because "California was the focal point both of the story and of the harm suffered". Calder, 465, U.S. 789 The writers "actions were expressly aimed at California", the Court said, " and they knew that the brunt of [the potentially devastating] injury would be felt by [the actress] in the state in which she lives and works". Calder, 465, U.S. at 789-90

The Circuit Court then ruled in the case of Stanley Young that Calder does not sweep that broadly and cites the case of ESAB Group, Inc. v Centricut, Inc. 126 Fed. 3rd 617,625-26 Fourth Circuit 1997 In ESAB, the Circuit Court stated, "although the place that the Plaintiff feels the alleged injury was plainly relevant to the [jurisdictional] inquiry, it must ultimately be accompanied by the Defendant's own [sufficient minimum] contacts with the state if jurisdiction... is to be upheld" Id. at 626 (App. 11a)

In ALS Scan, the Circuit Court tried to adopt the traditional standard for establishing the specific jurisdiction to make sense in the Internet context. The Fourth Circuit concluded that a state may, consistent with due process exercise judicial power over a person outside of the state when that person: 1. Directs electronic activity into the state, 2. With the manifested

intent of engaging in business or other interactions within the state, 3. That activity creates, in a person within the state, a potential cause of action cognizable in the states court". ALS Scan, 293 F. 3d at 714.

The Fourth Circuit concluded that the facts of this case established that the newspapers websites, as well as the articles in question, were aimed at a Connecticut audience. The newspapers did not post materials on the Internet with the manifest intent of targeting Virginia readers. Accordingly, the newspapers could not have "reasonably anticipated being held into Court [in Virginia] to answer for the truth of the statements held in their articles." The Fourth Circuit then concluded that the newspapers do not have sufficient Internet contacts with Virginia to permit the District Court to exercise specific jurisdiction over them Young v New Haven Advocate, 315 F. 3d 256, 264 (App. 13a, 14a)

In applying its decision on the ALS Scan case the Fourth Circuit adopted the principles set forth in a 1997 Pennsylvania case entitled Zippo Manufacturing Company v Zippo Dot Com, Inc. 952 Fed. Supplement 1119 Western District of Pennsylvania, 1997 ("Zippo") In Zippo, a Pennsylvania District Court analyzed the website suggesting whether a website accessible in the forum state conferred jurisdiction dependent on "the nature and quality of commercial activity that an entity conducts over the Internet" Zippo at 1124

The District Court in Zippo then developed a "sliding scale" for defining when electronic contacts within a state are sufficient.

> "At one end of the spectrum are situations where a Defendant clearly does business over the Internet. If a Defendant enters into contracts with residents of a foreign

> jurisdiction that involve a knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end of situations where the Defendant is simply posted information on an Internet website which is accessible to users in foreign jurisdictions. A passive website that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction. The middle ground is occupied by interactive websites where a user can exchange information with the hose computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the website". Id.

The Fourth Circuit failed to state any specific reason to justify why Internet activities serve as a proxy for minimum contacts or why maintaining a highly interactive website should independently give rise to personal jurisdiction.

While interactivity is a characteristic of a specific website itself, such an approach does not consider the specific form to which the behavior is targeted. The degree of interactivity truly reveals nothing about whether the Defendant has taken advantage of the benefits of the specific form or whether it can reasonably anticipate being subject to jurisdiction there. Indeed the Zippo scale is not applicable to defamation cases in which there is not a commercial transactions, but an intentional tort.

The Zippo model presumes that all websites to some degree are interactive. At a basic level, websites are never really passive because they are a continuous transmission of information passed between the user and the cite operator which occurs with every "hit" on a website, regardless of whether the hit results in a transaction. Oasis Corp. v Judd, 132 Fed. Supp. 2nd 612 (S.D. 2001)

Although the Fourth Circuit tried to adopt the standard for reconciling contacts through electronic media with standard due process principles, it is plain that the Court misunderstood this Honorable Court's decision in Calder v Jones when it applied the Zippo "sliding scale" test. For had the Court followed Calder, interactivity would not be the primary consideration in regards to personal jurisdiction cases. Instead the focus on personal jurisdiction issues would be on the conduct of the parties. The Court would have found that personal jurisdiction is proper in Virginia because the newspapers understood that their defamatory articles, which were available to Virginia residents on the Internet, would expose Young to public hatred, contempt, and ridicule in Virginia where he lived and worked.

In spite of applying the Zippo standard, the Court's decision in Young v New Haven was completely absent of an analysis as to whether or not the Connecticut newspapers websites were interactive or passive adding to the confusion over the issues of cyber-jurisdiction.

3. OTHER CIRCUITS HAVE REJECTED ZIPPO

A. THE D.C. CIRCUIT

The United States Court of Appeals for the District of Columbia Circuit in GTE New Media Services Media, Inc. v Bell South Corp, 199 F. 3rd. 1343 (D.C. Cir. 2000) held the District Court erred in concluding there was sufficient evidence to find personal jurisdiction, nevertheless, the Court determined the Plaintiff was entitled to pursue discovery aimed at matters relating to personal jurisdiction. In GTE the D.C. Court considered an anti-trust case in which ("GTE") contended that Bell South Corp. and other companies were engaged in a conspiracy to dominate the Internet directories market in the Washington, D.C. area by diverting Internet users from GTE's websites to the Defendant's websites instead.

In this case, the Court of Appeals held that, because Bell South's only proven contacts with the District of Columbia were based on the fact that its residents could access Defendant's Internet Yellow Pages within the city that the contacts were insufficient to allow the exercise of personal jurisdiction. The D.C. Circuit's focus in the case was on the Defendant's activities, specifically whether they had caused harm within the forum as a result of those activities. This was in contrast to the District Court's opinion in GTE in which the D.C. District Court had applied the Zippo "sliding scale" approach and found the Defendant's websites fell unto the uncertain middle ground and granted jurisdiction based on the highly interactive nature and commercial quality of the websites.

The D.C. Circuit disapproved of treating a case involving Internet any differently from any other jurisdictional case and stated, " We do not believe that

the advanced technology, say as with the Internet, should vitiate long-held in violate principles of federal court jurisdiction". GTE 199 F. 3d 1343, 1350 (D.C. Cir 2000)

The D. C. Circuit's approach appropriately focused on traditional purposeful availment standard and whether or not Defendants had targeted their behavior towards a specific forum, and while access to Internet Yellow Pages was not enough to satisfy due process minimum requirements, as set forth in International Shoe Co v Washington 326 U.S. 310 66 S. Ct. 154 (1945), "purposeful availment" under the Calder "effects test" would be under this decision.

A. THE NINTH CIRCUIT

In the case of Panavision International, L.P. v Toeppen, 141 F. 3d 1316 (9th Cir. 1998) the Ninth Circuit upheld personal jurisdiction in a case involving a "cyber-pirate" (i.e., someone who steals valuable trademarks, establishes the main names on the Internet using the trademarks, and then offers to sell the domain names back to the rightful trademark owners). Panavision at 1318

The Court in Panavision employed the Calder "effects doctrine", which holds that "jurisdiction may attach if the Defendants conduct is aimed at or has an effect in the forum state" Panavision at 1321 The Court concluded that " the brunt of the harm of Panavision was felt in California", given that Panavisions principle place of business was in California and "the heart of the theatrical motion picture and television industry is located there." Panavision at 1321

This analysis is similar to the one that the District Court applied in the Young case in that the harm to Stanley young was felt in Virginia. He is a Virginia

resident who was employed by the State of Virginia at a facility located at Virginia.

C. THE TENTH CIRCUIT.

In the case of Intercom, Inc. v Bell Atlantic Internet Solutions, 205 Fed. 3rd 1244 (Tenth Circuit 2000), The Untied States Court of Appeals for the Tenth Circuit reversed the District Court and found jurisdiction over a non-resident Internet company, Bell Atlantic Internet Solutions, "Bell Atlantic" In this case the Court of Appeals found that

> Although the [Bell Atlantic] may have had a legitimate business reason for not terminating its use of the Oklahoma mail server immediately-concerns over interrupting it customer service—this does not negate the fact that [Bell Atlantic] purposely availed itself of the Oklahoma server with almost four months after being notified of the erroneous address. Id. at 1248.

The Court rejected Bell Atlantic's arguments that its inadvertent contacts with Oklahoma were merely "fortuitous". "After receiving notice of the routing error, Defendant knew its conduct over the next four months was causing injury in Oklahoma and it should have reasonably have expected to be sued there." Id. at 1248 Therefore, jurisdiction in Oklahoma was deemed proper. Id. at 1248

The Court in this case also relied upon the factors as discussed in Burger King and concluded that the exercise of jurisdiction was reasonable. Id. At 1249

D. THE SIXTH CIRCUIT.

In CompuServe, Inc. v Patterson, 89 F. 3d 1257 (6th Cir. 1996), the Sixth Circuit found personal jurisdiction over a Defendant in Ohio, because the Defendant had entered into a contract which allowed him to market his software in other states with Ohio-based CompuServe acting as his distributor. The Court concluded it was reasonable to subject the Defendant to suit in Ohio because it was home to the computer network service that he has employed. The Court determined that the Defendant was on notice that he had created a connection with Ohio because he had sent his software, via electronic links to Ohio and advertised his products on CompuServe. The Court highlighted that "it is Patterson's relationship with CompuServe as a software provider marketer that is crucial to this case". CompuServe at 1264 Thus, by choosing the Ohio-based CompuServe to provide his computer network services, Patterson had "purposely availed" himself to the Ohio forum.

The Sixth Circuit also addressed a similar issue in Reynolds v International Amateur Athletic Federation, in Reynolds, a London-based association published a press release regarding the Plaintiff's disqualification from international track competition for two years following his failure of a drug test. Reynolds at 1112. The Plaintiff, an Ohio resident, claimed that the alleged defamation had cost him contracts in Ohio and cited Calder in support of this argument that personal jurisdiction over the Defendant in Ohio was proper. Id. at 1119-20. The Court in Reynolds found Calder in opposite because, inter alia, the allegedly defamatory press release dealt with the Plaintiff's activities in Monaco not Ohio; the source of the report was a urine sample taken in Monaco and analyzed in Paris and the "focal point" of the release was not Ohio. Id. at 1120

The Court also cited two distinctions arguably not present in the case at hand: The Reynolds Court also made note that the Plaintiff's professional reputation was not centered in Ohio. This case is distinguishable from the Young case in that the allegedly defamatory press release in the Young case dealt with his activities in Virginia not Connecticut and the source of the report was alleged prison activities and prisoner reports from Wallens Ridge State Prison located in Big Stone Gap, Virginia and the focal point of the release was Virginia. What is important in this case is the Sixth Circuit's endorsement of the Calder "effects test". One can argue the application of the facts of the present case in Young would have resulted in a finding of jurisdiction based on the criteria set forth in Reynolds. Reynolds v International Amateur Athletic Federation, 23 F. 3d 1110 (6th Cir. 1994)

D. THE THIRD CIRCUIT

The Third Circuit further dealt with a defamation case and applied the Calder "effects test" in Remick v Manfredy, 238 F. 3d 248 (3rd Cir. 2001) In determining whether jurisdiction was proper under Remick the Fourth Circuit applied the Calder v Jones "effects test". This defamation claim arose out of two letters, both sent to Remick with no copies showing any other Pennsylvania recipient. The first letter, dated March 2, 1998, was from Manfredy to Remick terminating his representation because of alleged broken promises and failures as a negotiator. The Complaint also alleged that the charges in the letter were published "in whole and in part", by Brown and John Manfredy to "other members of the professionals of the boxing community" Remick at 257 The second letter dated September 11, 1998, was sent by clause and reiterated Manfredy's statements in the March 2, 1998, letter that Remick was fired for

inadequately representing Manfredy and urged him to stop "insisting on attempting to extort money" Manfredy at 258. As stated the Court in this case applied the Calder "effects test" which requires the Plaintiff to show that: 1. The Defendant commended an intentional tort; 2. The Plaintiff felt the brunt of the harm in the forum so that the forum can be set to be the focal point of the harm suffered by the Plaintiff as a result of that tort; 3. The Defendant expressly aimed his tortuous conduct at the forum so that the forum can be said to be the focal point of a tortuous activity. Remick at 258. While the Court felt that Remick had satisfied the first two prongs of the Calder "effects test" the Court found that he did not satisfy the third prong "Remick argues that because two persons in his office read the March 2, 1998, letter while it was on the fax machine, it was published in Pennsylvania therefore, the targeting requirement was satisfied" Remick at 259. "We are not persuaded because it is clear from Remick's own affidavit that the two persons in his office read the March 2, 1998, letter solely because it was lying on the fax machine. There is no indication that the letter was targeted at them or anyone in Pennsylvania other than Remick." Remick at 259. The same cannot be said for the facts in the Young case in which the newspapers were writing articles about activities taking place at a correctional institute in Virginia by a Virginia resident employed by the Commonwealth of Virginia. This case is distinguishable from the case at hand because Young was a resident employed at a correctional facility in Virginia. But, what is important is that the Third Circuit also applies the Calder "effect test" in defamation cases.

F. THE FIFTH CIRCUIT.

Another important case of note is the Fifth Circuit's analysis on a similar claim in the case of Revell v Lidov, 317 F. 3d 467 (5th Cir. 2002) in which the Plaintiff, a former Associate Deputy Director of the Federal Bureau of Investigations appealed from an Order of the United States District Court for the Northern District of Texas dismissing for lack of personal jurisdiction the former FBI Director's claim against Defendants, a University and an author, arising out of the author's posting of an article on an Internet bulletin board hosted by the University. The Former FBI Director was a resident in Texas and sued the University which had its principle offices in New York City and the author was a Massachusetts resident.

In this Revell, the Court of Appeals upheld the decision of the District Court to dismiss for lack of personal jurisdiction and stated that contacts with the University of Texas were not in any way "substantial" where the article written by the author about a former FBI Director contained no reference to Texas, nor did it refer to the Texas activities of the former FBI Director, and it was not directed at Texas readers as distinguished from readers in other states. Revell at 467

This case is very distinguished from the case of Young v New Haven Advocate in which the alleged defamatory articles contained numerous references to Virginia, in fact, most if not all of the activities in the articles were taking place in Virginia and reference to Stanley Young were directed to his activities as Warden taking place in Virginia. Virginia was the focal point of both the story and the harm suffered.

In conclusion, the Fifth Circuit Court stated, "It is not fairness calibrated by the likelihood of success on the merits or relative fault. Our ultimate inquiry is rooted in the limits imposed on states by the due

process clause of the Fourteenth Amendment. It is fairness judged by the reasonableness of Texas exercising its power over residents of Massachusetts and New York. This inquiry into fairness captures the reasonableness of hauling a Defendant from his home state before the Court of a sister state; into Maine a pragmatic account of reasonable expectations-if you are going to pick a fight in Texas, it is reasonable to expect that it be settled there. It is not fairness calibrated by the likelihood of success on the merits or relative thought. Rather, we look at the **geographic focus** of the article, not the bite of the defamation, the blackness of the calumny, or who provoked the fight." Revell v Lidov, 317, F. 3d 467 (5th Cir. 2002) In the case in issue now, the "geographic focus" of the articles in the Young case is in Virginia and Virginia is the focal point of this story and thus, jurisdiction is proper in the Commonwealth of Virginia.

Indeed, application of the sliding scale analysis itself has been inconsistent from Court to Court, leaving potential Plaintiffs with no certainty that their case will be heard in their local forum. Additionally, potential Defendants are unable to judge the risk of being held into a foreign Court. "While numerous Courts have found the sliding scale analysis helpful..., Court's have also recognized that, regardless of a websites passivity or interactivity, the essential question remains the same-did the Defendant purposely direct activity at the forum" Vinten v Jeanot Marine Alliances, S.A. , 191 F. Supp. 2d 642, 647 (D.S.C. 2002) The public nature of the Internet in the Calder v Jones "effects doctrine make it easier to establish personal jurisdiction over a Defendant and defamation cases involving the Internet.

With the exception of defamation or similar type cases a Defendant's passive website, accessible in the forum, standing alone, is not sufficient to establish jurisdiction. Characterizing the Defendant's website is

interactive is also not enough, rather, as in other cases, Courts should exam the nature and quality of the Defendant's activities conducted over the Internet by which it may be said that the Defendant has purposely availed "itself of the privilege of conducting activities within the forum state thus, invoking the benefits and protections of its laws. Hanson v Denokla, 357 U.S. 235, 254 (1958)

CONCLUSION

THEREFORE, Petitioner, Stanley Young, requests of this Court that it GRANT its Petition for Writ of Certiorari to the United States Supreme Court.

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No. 01-2340

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

STANLEY K. YOUNG,
Plaintiff-Appellee,

v.

NEW HAVEN ADVOCATE; GAIL THOMPSON; CAMILLE JACKSON; HARTFORD COURANT; BRIAN TOOLAN; AMY PAGNOZZI,
Defendants-Appellants,

and

MICHAEL LAWLOR; CAROLYN NAH; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; CONNECTICUT POST; RICK SAWYERS; KEN DIXON, Defendants. ADVANCE PUBLICATIONS, INCORPORATED; AMERICAN SOCIETY OF NEWSPAPER EDITORS; ASSOCIATED PRESS; ASSOCIATION OF ALTERNATIVE NEWSWEEKLIES; BELO CORPORATION; BLOOMBERG, L.P.; CENTER FOR DEMOCRACY & TECHNOLOGY; DAILY NEWS, L.P.; DOW JONES AND COMPANY, INCORPORATED; EL DIA, INCORPORATED; THE E. W. SCRIPPS COMPANY; THE HEARST CORPORATION; INVESTIGATIVE REPORTERS AND EDITORS, INCORPORATED; MAGAZINE PUBLISHERS OF AMERICA; THE MCCLATCHY COMPANY; NATIONAL ASSOCIATION OF BROADCASTERS; NEWSLETTER & ELECTRONIC PUBLISHERS ASSOCIATION; NEWSPAPER ASSOCIATION OF AMERICA; THE NEW YORK TIMES; ONLINE NEWS ASSOCIATION; THE RADIO-

TELEVISION NEWS DIRECTORS ASSOCIATION; THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS; SOCIETY OF PROFESSIONAL JOURNALISTS; VILLAGE VOICE MEDIA, INCORPORATED; THE WASHINGTON POST COMPANY; ZIFF DAVIS MEDIA, INCORPORATED, Amici Supporting Appellants.

June 3, 2002, Argued

December 13, 2002, Decided

COUNSEL:

ARGUED: Robert Douglass Lystad, BAKER & HOSTETLER, L.L.P., Washington, D.C., for Appellants.

Robert Stuart Collins, FLEMING & COLLINS, P.C., Norton, Virginia, for Appellee.

ON BRIEF: Bruce W. Sanford, Bruce D. Brown, BAKER & HOSTETLER, L.L.P., Washington, D.C.; Wade W. Massie, PENN, STUART & ESKRIDGE, Abington, Virginia; Stephanie S. Abrutyn, TRIBUNE COMPANY, New York, New York, for Appellants.

Robert M. O'Neil, THOMAS JEFFERSON CENTER FOR THE PROTECTION OF FREE EXPRESSION, Charlottesville, Virginia; George Rutherglen, UNIVERSITY OF VIRGINIA LAW SCHOOL, Charlottesville, Virginia, for Amici Curiae.

JUDGES:

Before MICHAEL and GREGORY, Circuit Judges, and Bobby R. BALDOCK, Senior Circuit Judge of the United States Court of Appeals for the Tenth Circuit, sitting by designation. Judge Michael wrote the opinion, in which Judge Gregory and Senior Judge Baldock joined.

OPINIONBY:
MICHAEL

OPINION:

MICHAEL, Circuit Judge:

The question in this appeal is whether two Connecticut newspapers and certain of their staff (sometimes, the "newspaper defendants") subjected themselves to personal jurisdiction in Virginia by posting on the Internet news articles that, in the context of discussing the State of Connecticut's policy of housing its prisoners in Virginia institutions, allegedly defamed the warden of a Virginia prison. Our recent decision in *ALS Scan, Inc. v. Digital Service Consultants, Inc., 293 F.3d 707 (4th Cir. 2002)*, supplies the standard for determining a court's authority to exercise personal jurisdiction over an out-of-state person who places information on the Internet. Applying that standard, we hold that a court in Virginia cannot constitutionally exercise jurisdiction over the Connecticut-based newspaper defendants because they did not manifest an intent to aim their websites or the posted articles at a Virginia audience. Accordingly, we reverse the district court's order denying the defendants' motion to dismiss for lack of personal jurisdiction.

I.

Sometime in the late 1990s the State of Connecticut was faced with substantial overcrowding in its maximum security prisons. To alleviate the problem, Connecticut contracted with the Commonwealth of Virginia to house Connecticut prisoners in Virginia's correctional facilities. Beginning in late 1999 Connecticut transferred about 500 prisoners, mostly African-American and Hispanic, to the Wallens Ridge State Prison, a

"supermax" facility in Big Stone Gap, Virginia. The plaintiff, Stanley Young, is the warden at Wallens Ridge. Connecticut's arrangement to incarcerate a sizeable number of its offenders in Virginia prisons provoked considerable public debate in Connecticut. Several Connecticut legislators openly criticized the policy, and there were demonstrations against it at the state capitol in Hartford.

Connecticut newspapers, including defendants the New Haven Advocate (the Advocate) and the Hartford Courant (the Courant), began reporting on the controversy. On March 30, 2000, the Advocate published a news article, written by one of its reporters, defendant Camille Jackson, about the transfer of Connecticut inmates to Wallens Ridge. The article discussed the allegedly harsh conditions at the Virginia prison and pointed out that the long trip to southwestern Virginia made visits by prisoners' families difficult or impossible. In the middle of her lengthy article, Jackson mentioned a class action that inmates transferred from Connecticut had filed against Warden Young and the Connecticut Commissioner of Corrections. The inmates alleged a lack of proper hygiene and medical care and the denial of religious privileges at Wallens Ridge. Finally, a paragraph at the end of the article reported that a Connecticut state senator had expressed concern about the presence of Confederate Civil War memorabilia in Warden Young's office. At about the same time the Courant published three columns, written by defendant-reporter Amy Pagnozzi, questioning the practice of relocating Connecticut inmates to Virginia prisons. The columns reported on letters written home by inmates who alleged cruelty by prison guards. In one column Pagnozzi called Wallens Ridge a "cut-rate gulag." Warden Young was not mentioned in any of the Pagnozzi columns.

On May 12, 2000, Warden Young sued the two newspapers, their editors (Gail Thompson and Brian Toolan), and the two reporters for libel in a diversity action filed in the Western District of Virginia. He claimed that the newspapers' articles imply that he "is a racist who advocates racism" and that he "encourages abuse of inmates by the guards" at Wallens Ridge. Young alleged that the newspapers circulated the allegedly defamatory articles throughout the world by posting them on their Internet websites.

The newspaper defendants filed motions to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(2) on the ground that the district court lacked personal jurisdiction over them. In support of the motions the editor and reporter from each newspaper provided declarations establishing the following undisputed facts. The Advocate is a free newspaper published once a week in New Haven, Connecticut. It is distributed in New Haven and the surrounding area, and some of its content is published on the Internet. The Advocate has a small number of subscribers, and none of them are in Virginia. The Courant is published daily in Hartford, Connecticut. The newspaper is distributed in and around Hartford, and some of its content is published on the Internet. When the articles in question were published, the Courant had eight mail subscribers in Virginia. Neither newspaper solicits subscriptions from Virginia residents. No one from either newspaper, not even the reporters, traveled to Virginia to work on the articles about Connecticut's prisoner transfer policy. The two reporters, Jackson of the Advocate and Pagnozzi of the Courant, made a few telephone calls into Virginia to gather some information for the articles. Both interviewed by telephone a spokesman for the Virginia Department of Corrections. All other interviews were done with people located in Connecticut. The two reporters wrote their articles in Connecticut. The

individual defendants (the reporters and editors) do not have any traditional contacts with the Commonwealth of Virginia. They do not live in Virginia, solicit any business there, or have any assets or business relationships there. The newspapers do not have offices or employees in Virginia, and they do not regularly solicit or do business in Virginia. Finally, the newspapers do not derive any substantial revenue from goods used or services rendered in Virginia.

In responding to the declarations of the editors and reporters, Warden Young pointed out that the newspapers posted the allegedly defamatory articles on Internet websites that were accessible to Virginia residents. In addition, Young provided copies of assorted printouts from the newspapers' websites. For the Advocate, Young submitted eleven pages from newhavenadvocate. com and newmassmedia.com for January 26, 2001. The two pages from newhavenadvocate.com are the Advocate's homepage, which includes links to articles about the "Best of New Haven" and New Haven's park police. The nine pages from newmassmedia.com, a website maintained by the publishers of the Advocate, consist of classified advertising from that week's newspapers and instructions on how to submit a classified ad. The listings include advertisements for real estate rentals in New Haven and Guilford, Connecticut, for roommates wanted and tattoo services offered in Hamden, Connecticut, and for a bassist needed by a band in West Haven, Connecticut. For the Courant, Young provided nine pages from hartfordcourant.com and ctnow.com for January 26, 2001. The hartfordcourant.com homepage characterizes the website as a "source of news and entertainment in and about Connecticut." A page soliciting advertising in the Courant refers to "exposure for your message in this market" in the "best medium in the state to deliver your advertising

message." The pages from ctnow.com, a website produced by the Courant, provide news stories from that day's edition of the Courant, weather reports for Hartford and New Haven, Connecticut, and links to sites for the University of Connecticut and Connecticut state government. The website promotes its online advertising as a "source for jobs in Connecticut." The website printouts provided for January 26, 2001, do not have any content with a connection to readers in Virginia.

The district court denied the newspaper defendants' motions to dismiss, concluding that it could exercise personal jurisdiction over them under Virginia's long-arm statute, Va. Code Ann. § 8.01-328(A)(3), because "the defendants' Connecticut-based Internet activities constituted an act leading to an injury to the plaintiff in Virginia." The district court also held that the defendants' Internet activities were sufficient to satisfy the requirements of constitutional due process. With our permission the newspaper defendants are taking this interlocutory appeal. The facts relating to jurisdiction are undisputed, and the district court's decision that it has personal jurisdiction over these defendants presents a legal question that we review de novo. *See Christian Sci. Bd. of Dirs. of the First Church of Christ, Scientist v. Nolan, 259 F.3d 209, 215 (4th Cir. 2001).*

II.

A.

A federal court may exercise personal jurisdiction over a defendant in the manner provided by state law. *See ESAB Group, Inc. v. Centricut, Inc., 126 F.3d 617, 622 (4th Cir. 1997);* Fed. R. Civ. P. 4(k)(1)(A). Because Virginia's long-arm statute extends personal jurisdiction to the extent permitted by the Due Process Clause, *see*

English & Smith v. Metzger, 901 F.2d 36, 38 (4th Cir. 1990), "the statutory inquiry necessarily merges with the constitutional inquiry, and the two inquiries essentially become one." *Stover v. O'Connell Assocs., Inc., 84 F.3d 132, 135-36 (4th Cir. 1996)*. The question, then, is whether the defendant has sufficient "minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154 (1945)* (quoting *Milliken v. Meyer, 311 U.S. 457, 463, 85 L. Ed. 278, 61 S. Ct. 339 (1940))*. A court may assume power over an out of-state defendant either by a proper "finding [of] specific jurisdiction based on conduct connected to the suit or by [a proper] finding [of] general jurisdiction." *ALS Scan, Inc. v. Digital Serv. Consultants, Inc., 293 F.3d 707, 711 (4th Cir. 2002)*. Warden Young argues only for specific jurisdiction, so we limit our discussion accordingly. When a defendant's contacts with the forum state "are also the basis for the suit, those contacts may establish specific jurisdiction." *Id. at 712*. In determining whether specific jurisdiction exists, we traditionally ask (1) whether the defendant purposefully availed itself of the privileges of conducting activities in the forum state, (2) whether the plaintiff's claim arises out of the defendant's forum-related activities, and (3) "whether the exercise of personal jurisdiction over the defendant would be constitutionally reasonable." *Id. at 712. See also Christian Sci. Bd., 259 F.3d at 216*. The plaintiff, of course, has the burden to establish that personal jurisdiction exists over the out-of-state defendant. *Young v. FDIC, 103 F.3d 1180, 1191 (4th Cir. 1997)*.

B.

We turn to whether the district court can exercise specific jurisdiction over the newspaper defendants,

namely, the two newspapers, the two editors, and the two reporters. To begin with, we can put aside the few Virginia contacts that are not Internet based because Warden Young does not rely on them. Thus, Young does not claim that the reporters' few telephone calls into Virginia or the Courant's eight Virginia subscribers are sufficient to establish personal jurisdiction over those defendants. Nor did the district court rely on these traditional contacts.

Warden Young argues that the district court has specific personal jurisdiction over the newspaper defendants (hereafter, the "newspapers") because of the following contacts between them and Virginia: (1) the newspapers, knowing that Young was a Virginia resident, intentionally discussed and defamed him in their articles, (2) the newspapers posted the articles on their websites, which were accessible in Virginia, and (3) the primary effects of the defamatory statements on Young's reputation were felt in Virginia. Young emphasizes that he is not arguing that jurisdiction is proper in any location where defamatory Internet content can be accessed, which would be anywhere in the world. Rather, Young argues that personal jurisdiction is proper in Virginia because the newspapers understood that their defamatory articles, which were available to Virginia residents on the Internet, would expose Young to public hatred, contempt, and ridicule in Virginia, where he lived and worked. As the district court put it, "the defendants were all well aware of the fact that the plaintiff was employed as a warden within the Virginia correctional system and resided in Virginia," and they "also should have been aware that any harm suffered by Young from the circulation of these articles on the Internet would primarily occur in Virginia."

Young frames his argument in a way that makes one thing clear: if the newspapers' contacts with Virginia were sufficient to establish personal jurisdiction, those contacts arose solely from the newspapers' Internet-based activities. Recently, in *ALS Scan* we discussed the challenges presented in applying traditional jurisdictional principles to decide when "an out-of-state citizen, through electronic contacts, has conceptually 'entered' the State via the Internet for jurisdictional purposes." *ALS Scan, 293 F.3d at 713.* There, we held that "specific jurisdiction in the Internet **[**13]** context may be based only on an out-of-state person's Internet activity directed at [the forum state] and causing injury that gives rise to a potential claim cognizable in [that state]." *Id. at 714.* We noted that this standard for determining specific jurisdiction based on Internet contacts is consistent with the one used by the Supreme Court in *Calder v. Jones, 465 U.S. 783, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1984). ALS Scan, 293 F.3d at 714. Calder*, though not an Internet case, has particular relevance here because it deals with personal jurisdiction in the context of a libel suit. In *Calder* a California actress brought suit there against, among others, two Floridians, a reporter and an editor who wrote and edited in Florida a National Enquirer article claiming that the actress had a problem with alcohol. The Supreme Court held that California had jurisdiction over the Florida residents because "California [was] the focal point both of the story and of the harm suffered." *Calder, 465 U.S. at 789.* The writers' "actions were expressly aimed at California," the Court said, "and they knew that the brunt of [the potentially devastating] injury would be felt by [the actress] in the State in which she lives and works and in which the National Enquirer has its largest circulation," 600,000 copies. *Calder, 465 U.S. at 789-90.*

Warden Young argues that *Calder* requires a finding of jurisdiction in this case simply because the newspapers posted articles on their Internet websites that discussed the warden and his Virginia prison, and he would feel the effects of any libel in Virginia, where he lives and works. *Calder* does not sweep that broadly, as we have recognized. For example, in *ESAB Group, Inc. v. Centricut, Inc., 126 F.3d 617, 625-26 (4th Cir. 1997)*, we emphasized how important it is in light of *Calder* to look at whether the defendant has expressly aimed or directed its conduct toward the forum state. We said that "although the place that the plaintiff feels the alleged injury is plainly relevant to the [jurisdictional] inquiry, it must ultimately be accompanied by the defendant's own [sufficient minimum] contacts with the state if jurisdiction . . . is to be upheld." *Id. at 626.* We thus had no trouble in concluding in *ALS Scan* that application of *Calder* in the Internet context requires proof that the out-of-state defendant's Internet activity is expressly targeted at or directed to the forum state. *ALS Scan, 293 F.3d at 714.* In *ALS Scan* we went on to adapt the traditional standard (set out in part II.A., *supra*) for establishing specific jurisdiction so that it makes sense in the Internet context. We "concluded that a State may, consistent with due process, exercise judicial power over a person outside of the State when that person (1) directs electronic activity into the State, (2) with the manifested intent of engaging in business or other interactions within the State, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State's courts." *ALS Scan, 293 F.3d at 714.*

When the Internet activity is, as here, the posting of news articles on a website, the *ALS Scan* test works more smoothly when parts one and two of the test are considered together. We thus ask whether the newspapers manifested an intent to direct their website

content -which included certain articles discussing conditions in **[**16]** a Virginia prison – to a Virginia audience. As we recognized in *ALS Scan*, "a person's act of placing information on the Internet" is not sufficient by itself to "subject[ ] that person to personal jurisdiction in each State in which the information is accessed." *Id. at 712.* Otherwise, a "person placing information on the Internet would be subject to personal jurisdiction in every State," and the traditional due process principles governing a State's jurisdiction over persons outside of its borders would be subverted. *Id.See also GTE New Media Servs. Inc. v. Bellsouth Corp., 339 U.S. App. D.C. 332, 199 F.3d 1343, 1350 (D.C. Cir. 2000).* Thus, the fact that the newspapers' websites could be accessed anywhere, including Virginia, does not by itself demonstrate that the newspapers were intentionally directing their website content to a Virginia audience. Something more than posting and accessibility is needed to "indicate that the [newspapers] purposefully (albeit electronically) directed [their] activity in a substantial way to the forum state," Virginia. *Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1321 (9th Cir. 1998)* **[**17]** (quotation omitted). The newspapers must, through the Internet postings, manifest an intent to target and focus on Virginia readers.

We therefore turn to the pages from the newspapers' websites that Warden Young placed in the record, and we examine their general thrust and content. The overall content of both websites is decidedly local, and neither newspaper's website contains advertisements aimed at a Virginia audience. For example, the website that distributes the Courant, ctnow.com, provides access to local (Connecticut) weather and traffic information and links to websites for the University of Connecticut and Connecticut state government. The Advocate's website features stories focusing on New

Haven, such as one entitled "The Best of New Haven." In sum, it appears that these newspapers maintain their websites to serve local readers in Connecticut, to expand the reach of their papers within their local markets, and to provide their local markets with a place for classified ads. The websites are not designed to attract or serve a Virginia audience.

We also examine the specific articles Young complains about to determine whether they were posted on the Internet with the intent to target a Virginia audience. The articles included discussions about the allegedly harsh conditions at the Wallens Ridge prison, where Young was warden. One article mentioned Young by name and quoted a Connecticut state senator who reported that Young had Confederate Civil War memorabilia in his office. The focus of the articles, however, was the Connecticut prisoner transfer policy and its impact on the transferred prisoners and their families back home in Connecticut. The articles reported on and encouraged a public debate in Connecticut about whether the transfer policy was sound or practical for that state and its citizens. Connecticut, not Virginia, was the focal point of the articles. *Cf. Griffis v. Luban, 646 N.W.2d 527, 536 (Minn. 2002)* ("The mere fact that [the defendant, who posted allegedly defamatory statements about the plaintiff on the Internet] knew that [the plaintiff] resided and worked in Alabama is not sufficient to extend personal jurisdiction over [the defendant] in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the . . . statements.").

The facts in this case establish that the newspapers' websites, as well as the articles in question, were aimed at a Connecticut audience. The newspapers did not post materials on the Internet with the manifest intent of targeting Virginia readers. Accordingly, the newspapers

could not have "reasonably anticipated being haled into court [in Virginia] to answer for the truth of the statements made in their articles." *Calder, 465 U.S. at 790* (quotation omitted). In sum, the newspapers do not have sufficient Internet contacts with Virginia to permit the district court to exercise specific jurisdiction over them. *

We reverse the order of the district court denying the motions to dismiss for lack of personal jurisdiction made by the New Haven Advocate, Gail Thompson (its editor), and Camille Jackson (its reporter) and by the Hartford Courant, Brian Toolan (its editor), and Amy Pagnozzi (its reporter).

REVERSED

----------Footnotes----------

* Because the newspapers did not intentionally direct Internet activity to Virginia, and jurisdiction fails on that ground, we have no need to explore the last part of the *ALS Scan* inquiry, that is, whether the challenged conduct created a cause of action in Virginia. *See ALS Scan, 293 F.3d at 714.*

----------End Footnotes----------

Civil Action No.: 2:00CV00086

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA,
BIG STONE GAP DIVISION

STANLEY YOUNG,
Plaintiff,

v.

NEW HAVEN ADVOCATE, et al.,
Defendants.

August 9, 2001, Decided

August 10, 2001, Filed, Entered

COUNSEL:
For STANLEY YOUNG, plaintiff: Robert Stuart Collins.

For STANLEY YOUNG, plaintiff: Robert Stuart Collins, FLEMING & COLLINS, P.C., NORTON, VA.

For THE NEW HAVEN ADVOCATE, GAIL THOMPSON, CAMILLE JACKSON, THE HARTFORD COURANT, BRIAN TOOLAN, AMY PAGNOZZI, defendants: Frederick Wilson Chockley, Bruce W. Sanford, Robert D. Lystad, BAKER & HOSTETLER, WASHINGTON, DC.

For THE NEW HAVEN ADVOCATE, GAIL THOMPSON, CAMILLE JACKSON, THE HARTFORD COURANT, BRIAN TOOLAN, AMY PAGNOZZI, defendants: Wade W. Massie, PENN, STUART & ESKRIDGE, ABINGDON, VA.

For THE NEW HAVEN ADVOCATE, GAIL THOMPSON, CAMILLE JACKSON, THE HARTFORD COURANT, BRIAN TOOLAN, AMY PAGNOZZI, defendants: Stephanie S. Abrutyn, TRIBUNE COMPANY, NEW YORK, NY.

JUDGES:
Glen M. Williams, SENIOR UNITED STATES DISTRICT JUDGE.

OPINIONBY:
Glen M. Williams

OPINION:

[*500]

MEMORANDUM OPINION

I. INTRODUCTION

The plaintiff, Stanley Young, the warden of Wallens Ridge State Prison, ("Wallens Ridge"), in Big Stone Gap, Virginia, initiated this action alleging defamation against the defendants, *The New Haven Advocate* and *The Hartford Courant* along with an individual editor and columnist for each newspaper, based on diversity of citizenship. n1 Asserting a lack of personal jurisdiction, each of the defendants moved to dismiss the plaintiff's complaint pursuant to Federal Rules of Civil Procedure 12(b)(2).

The controversy here centers around several news articles written and published by the defendants regarding the controversial policy of sending Connecticut prisoners to Virginia prisons and the existence of Civil War memorabilia located in Young's

prison office. Wallens Ridge received and housed certain prisoners transferred by the State of Connecticut to Virginia.

Young alleges that the defendants circulated articles defaming him through Internet websites maintained by each of the defendant newspapers. Further, Young argues that Virginia residents could access the Internet sites and the defamatory articles published by the defendants in this case. Therefore, the plaintiff argues that sufficient contacts exist to establish personal jurisdiction over the defendants.

The defendants, however, claim that the maintenance of Internet websites which are accessible by Virginia residents standing alone is insufficient contact with the forum state for this court to exercise personal jurisdiction. As set forth in the reasoning below, this court holds that the exercise of personal jurisdiction over the defendants in this case is proper.

II. STATEMENT OF FACTS

In 1999, the State of Connecticut implemented a policy whereby it began transferring inmates from its facilities to correctional facilities located in Virginia. (Defendants' Memorandum of Points and Authorities at 2.) Specifically, Wallens Ridge, a "super-max" prison, was among the Virginia facilities which began housing certain Connecticut inmates. (Id.) For various reasons, Connecticut's policy of transferring prisoners from its correctional system to out-of-state prisons provoked public debate and led to demonstrations. (Id.) As a direct result of the controversial policy of transferring prisoners to Virginia and the subsequent public demonstrations, several news organizations began following the story and reported on the issue. (Id.) *The New Haven Advocate* and *The Hartford Courant*, both

Connecticut-based newspapers, published news articles concerning the transfer of Connecticut prisoners to Virginia. (Id.) The present controversy arose as a direct result of such articles published by the defendants.

Young alleges that defendants, *The New Haven Advocate*, along with its editor, Gail Thompson, and a reporter, Camille Jackson, maliciously composed and published articles which conveyed to the community at large that Young was a racist who advocates and tolerates racism and abuse of inmates by the correctional officers under his control. (Plaintiff's complaint at 4, P 7.) Young also alleges that *The New Haven Advocate* circulated these defamatory articles by means of mass communication within the State of Connecticut and throughout the world on the newspaper's Internet website. (Id. at 3, PP 3, 6.)

Young also alleges that *The Hartford Courant* along with its editor, Brian Toolan, and a reporter, Amy Pagnozzi, composed and published articles which conveyed to the community at large that Young was a racist who advocates and tolerates racism and abuse of inmates by the correctional officers under his control. (Id. at 17-18, P 7.) Young alleges that *The Hartford Courant* circulated these defamatory articles by means of mass communication within the State of Connecticut and throughout the world on the newspaper's Internet website. (Plaintiff's complaint at 16-17, PP 3, 6.) Moreover, as a direct result of such publications by the defendants, Young claims that he suffered significant harm to his reputation in Virginia. (Plaintiff's Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss at 3.)

Subsequently, the defendants collectively moved the court to dismiss Young's action for lack of personal jurisdiction pursuant to Federal Rules of Civil Procedure 12(b)(2). (Defendants' Memorandum of

Points and Authorities at 1.) In support of these motions, the defendants contend that Young's complaint lacks assertions which establish personal jurisdiction and that jurisdiction cannot be maintained against them because they lack the necessary contacts with Virginia. (Id. at 4.)

In particular, *The New Haven Advocate*, a weekly newspaper published and distributed in New Haven, Connecticut, and the surrounding area, does not dispute the fact that it published an article which alluded to the plaintiff on March 30, 2000. (Defendants' Memorandum of Points and Authorities at 2; Declaration of Gail Thompson at P 9.) Gail Thompson is the publisher of *The New Haven Advocate*. (Id.) Camille Jackson, a reporter for *The New Haven Advocate*, wrote the article, which described a lawsuit filed by Connecticut inmates to compel the removal of Civil War memorabilia from Young's office. (Defendants' Memorandum of Points and Authorities at 2; Declaration of Camille Jackson at P 7.) During the course of preparing this article, Jackson conducted a telephone interview with a spokesman for the Virginia Department of Corrections. (Defendants' Memorandum of Points and Authorities at 3; Declaration of Camille Jackson at P 8.)

The Hartford Courant, a daily newspaper published and distributed primarily in Hartford, Connecticut, and the surrounding region with some of its content published on the Internet, published three news columns concerning the policy of transferring Connecticut inmates to Virginia correctional facilities. (Defendants' Memorandum of Points and Authorities at 2; Declaration of Brian Toolan PP 8, 9.) Brian Toolan is the editor of *The Hartford Courant*. (Declaration of Brian Toolan P 9.) Amy Pagnozzi, a reporter for *The Hartford Courant*, wrote the three articles entitled

"Prison Policy Cost A Life, But Goes On," "Treatment of Inmates an Outrage," and "Any Time is Bad Time in Virginia." (Declaration of Amy Pagnozzi PP 2,7.) In preparing the articles, Pagnozzi conducted a telephone interview with a spokesman for the Virginia Department of Corrections. (Defendants' Memorandum of Points and Authorities at 3; Declaration of Amy Pagnozzi P 8.) The defendants argue that their contacts with the Commonwealth of Virginia are insufficient for this court to properly exercise personal jurisdiction over them under Virginia's long-arm statute. (Reply Brief on Behalf of *The Hartford Courant*, Brian Toolan, and Amy Pagnozzi Concerning Their Motion to Dismiss For Lack of Personal Jurisdiction at 2, 5.)

In support of this contention, the defendants argue that none of the writing, reporting or editing of the articles occurred in Virginia. (Id.) Further, the defendants argue that none of the defendants operates an office in Virginia, has a bank account in Virginia or solicits any business or engages in any persistent course of conduct in Virginia. (Id. at 3.) The defendants also contend that personal jurisdiction cannot be properly maintained by this court as all of the allegedly defamatory articles were prepared and published for a Connecticut audience. (Id.) More specifically, the defendants argue that maintenance of an Internet website that is accessible to Virginia residents twenty-four hours a day should not subject them to personal jurisdiction nationwide. (Id. at 1.)

On the other hand, Young argues that the maintenance of these Internet websites by which Virginia residents could access the alleged defamatory articles is sufficient contact for this court to properly exercise personal jurisdiction under Virginia's long-arm statute. See Va. Code Ann. § 8.01-328.1(A)(4) (Michie 2000). (Plaintiff's Memorandum of Points and

Authorities in Opposition to Defendants' Motion to Dismiss at 4.) More specifically, Young argues that the maintenance of these websites constitutes regularly doing or soliciting business within the Commonwealth of Virginia, and the posting of articles on these websites also constitutes a persistent course of conduct by the defendants. (Plaintiff's Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss at 5-6.) Hence, Young argues that this court can exercise personal jurisdiction over the defendants under § 8.01-328.1(A)(4) of Virginia's long-arm statute.

III. STANDARD OF REVIEW

In the present controversy, all of the defendants have filed a Rule 12(b)(2) motion to challenge this court's exercise of personal jurisdiction over them. Fed. R. Civ. P. 12(b)(2). Initially, the plaintiff's burden of establishing personal jurisdiction over a defendant may be established by a prima facie showing of a sufficient jurisdictional basis. *Dowless v. Warren-Rupp Houdailles, Inc., 800 F.2d 1305, 1307 (4th Cir. 1986).* At this stage, a court must draw all reasonable inferences arising from the facts alleged in favor of the party asserting jurisdiction. *Mylan Labs. Inc. v. Akzo, N.V., 2 F.3d 56, 60 (4th Cir. 1993); Combs v. Bakker, 886 F.2d 673, 676 (4th Cir. 1989).* When, as here, however, the exercise of personal jurisdiction is challenged through 12(b)(2) motions to dismiss with affidavits, the question becomes, "one for the judge, with the burden on the plaintiff ultimately to prove the existence of a ground for jurisdiction by a preponderance of the evidence." *Combs, 886 F.2d at 676.* In a diversity action such as this, a federal court may exercise jurisdiction over a defendant only if: (1) the applicable state long-arm statute confers jurisdiction and (2) the exercise of jurisdiction is consistent with

constitutional due process. See e.g. *Omni Capital Int'l Ltd. v. Rudolf Wolff & Co., 484 U.S. 97, 102-03, 98 L. Ed. 2d 415, 108 S. Ct. 404 (1987); Blue Ridge Bank v. Veribanc Inc., 755 F.2d 371, 373 (4th Cir. 1985).*

Under Virginia law, a plaintiff must first demonstrate that Virginia's long-arm statute reaches the nonresident defendant given the cause of action alleged and the nature of the defendant's Virginia-based contacts. *Bochan v. La Fontaine, 68 F. Supp.2d 692, 697 (E.D. Va. 1999)* (citing *Combs, 886 F.2d at 676).* The Virginia long-arm statute provides that Virginia courts may exercise personal jurisdiction over, *inter alia*, a person, who acts directly or through an agent, as to a cause of action arising from that person's:

> (3) Causing tortious injury by an act or omission in this Commonwealth; or (4) Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth.

Va. Code Ann. § 8.01-328.1(A)(3), (4) (Michie 2000). Secondly, a plaintiff in Virginia also must establish that the exercise of personal jurisdiction over the defendant does not exceed the bounds of due process. *Bochan, 68 F. Supp.2d at 697* (citing *Combs, 886 F.2d at 676).* In Virginia, courts may extend personal jurisdiction to the fullest extent permitted by constitutional due process. *English & Smith v. Metzger, 901 F.2d 36, 38 (4th Cir. 1990).*

The Due Process Clause of the Fifth Amendment requires sufficient minimum contacts with a forum state such that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

International Shoe Co. v. Washington, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154 (1945) (citing *Milliken v. Meyer, 311 U.S. 457, 463, 85 L. Ed. 278, 61 S. Ct. 339 (1940)).* To meet the minimum contacts requirement, the out-of-state individual must have purposefully directed his or her activity toward the forum state. *Lesnick v. Hollingsworth & Vose Co., 35 F.3d 939, 945 (4th Cir. 1996).*

IV. DISCUSSION

Ultimately, this case revolves around the interesting question of where acts or omissions conducted in cyberspace actually occur. Therefore, this court must first determine whether the defendants, either acting directly or through an agent, caused an injury from an act or omission within Virginia or outside of Virginia. See Va. Code Ann. § 8.01-328.1(A)(3), (4). If the court finds that the acts or omissions which are alleged to have caused injury occurred in Virginia, the court may exercise jurisdiction over these defendants under § 8.01-328(A)(3). If the court finds that these acts or omissions occurred outside of Virginia, the court must then determine if the defendants regularly did or solicited business or engaged in any other persistent course of conduct, or derived substantial revenue from goods used or consumed or services rendered in Virginia. See Va. Code Ann. § 8.01-328(A)(4). Next, the court must determine if the exercise of personal jurisdiction in this case would exceed the limits of due process. See *Bochan, 68 F. Supp.2d at 698.*

In making his argument for this court to exercise personal jurisdiction over the defendants, the plaintiff relies largely on the decision in Telco, a defamation case from the Eastern District of Virginia. *Telco Communications v. An Apple A Day, 977 F. Supp. 404 (E.D. Va. 1997).* In that case, Telco, the plaintiff, was a

Virginia corporation with a subsidiary, Dial & Save, which was involved in long-distance telephone service. *Id. at 405.* Apple, the defendant, was a Missouri telemarketing corporation that claimed to be the owner of the "Dial & Save" service-mark. Id. Telco alleged that the defendant issued press releases on the Internet and made calls to a securities analyst in Maryland which defamed Telco. Id. Telco claimed that such defamatory releases and calls harmed it by depressing the price of its stock. Id. The defendant acknowledged that it was advertising its firm and soliciting investment banking assistance by posting the press releases. *Id. at 406.* Nonetheless, the defendant sought to dismiss the action on the basis that personal jurisdiction could not be asserted by the Virginia federal court under Virginia's long-arm statute, Va. Code Ann. § § 8.01-328.1(A)(3) or (4), because the defendant did not conduct business in Virginia. *Id. at 406.* The defendant did not argue that the exercise of personal jurisdiction would offend notions of due process. *Id. at 405.*

The Telco court, relying to a great extent on the decision in *Inset Systems, Inc. v. Instruction Set, 937 F. Supp. 161, 165 (D. Conn. 1996),* held that advertising and maintaining a toll-free number on an Internet website provided a basis for exercising jurisdiction as such conduct by a nonresident defendant constituted "regularly doing or soliciting business" in Virginia. *Telco, 977 F. Supp. 407.* The court stated that because the nonresident defendants, "conducted their advertising and soliciting over the Internet, which could be accessed by a Virginia resident 24 hours a day, the defendants did so regularly for purposes of the long-arm statute." Id. Further, the court determined that because the defendants were advertising their firm and soliciting investment banking assistance in posting the press releases, the defendants were in fact conducting business through the Internet in Virginia. Id.

The Telco court also relied on the decision in *First American First v. National Association of Bank Women, 802 F.2d 1511 (4th Cir. 1986)*, to hold that the defendant's acts or omissions actually occurred in Virginia. The First American decision dealt with libelous letters directed at the plaintiffs who were located in Virginia; therefore, the court held that the primary and most devastating effects from such letters would be felt in Virginia. *First American First, 802 F.2d at 1517.* The Telco court held that the use of a computer as opposed to paper letters did not distinguish the First American First defendants from the defendants in *Telco. Telco, 937 F. Supp. at 407.* Furthermore, the Telco court specifically held that "defamation, like libel, occurs wherever the offensive material is circulated or distributed." *Id. at 408.*

The plaintiff also relies on the decision in *Bochan v. La Fontaine, 68 F. Supp. 2d 692 (E.D. Va. 1999).* In Bochan, the plaintiff criticized, often by means of the Internet, JFK conspiracy theories set forth in a book authored by two of the defendants, the La Fontaines. *Id. at 695.* In response to some of the plaintiff's Internet postings regarding their book, the defendants posted allegedly defamatory statements concerning the plaintiff on the Internet. *Id. at 695-696.* The plaintiff instituted an action against the defendants in the Virginia court alleging defamation and intentional infliction of emotional distress. *Id. at 696.* The defendants moved to dismiss for lack of personal jurisdiction.

In support of their motion, the defendants argued that they lacked the necessary connections or contacts with Virginia. *Id. at 696-697.* For example, the defendants argued that they derived no revenue from Virginia, did not have their own website. did not conduct commercial activity over the Internet, and accessed the Internet through a California-based

Internet service provider as opposed to a Virginia-based service provider. *Id. at 696-697.*

One of the defendants in Bochan, Harris, also claimed that he had no connections or contacts with Virginia in that he did not use a Virginia-based Internet service provider to post any statements, and he did not direct his postings to any Virginia resident. *Id. at 697.* In addition, Harris argued that his website directly stated that his corporation sells computers only in New Mexico and that his corporation had never sold any computers to anyone in Virginia. *Id. at 697.*

Bochan responded to the defendants' motion to dismiss for lack of personal jurisdiction by arguing that the La Fontaines posted their remarks by utilizing America Online, ("AOL"), a Virginia-based company, and that they also had advertised, promoted and sold their book in Virginia. Id. Bochan also argued that Harris used his website to conduct business and that his website was interactive and contained contact information and advertisements, as well as being accessible to Virginia residents 24 hours a day. Id. Bochan also contended that all of the defendants knew that he resided in Virginia and that the harm to his reputation and the resulting emotional distress would be suffered in Virginia. Id.

The court held that personal jurisdiction could be asserted over the La Fontaines consistent with the Virginia long-arm statute because they had utilized a Virginia-based Internet service provider to place their alleged defamatory remarks on the Internet, and this amounted to a tortious act committed within the Commonwealth of Virginia. *Id. at 699.* As for Harris, the court also held that it could assert personal jurisdiction over him even though he did not use a Virginia-based Internet service provider to publish his remarks. *Id. at 702.* The court reasoned that because Harris solicited patronage for his computer business

through an interactive website which was accessible in Virginia, he regularly did or solicited business in Virginia or engaged in a persistent course of conduct in Virginia for the purposes of the long-arm statute. *Id. at 702.* Further, the court noted that the fact that all of the defendants knew that the plaintiff was a citizen of Virginia and that the effects of their conduct would be felt in Virginia, the due process requirements for the exercise of personal jurisdiction were satisfied, as the defendants could have reasonably foreseen being haled into court in Virginia as a consequence of their actions. *Id. at 702.*

The Supreme Court's decision in *Keeton v. Hustler Magazine, Inc., et al, 465 U.S. 770, 79 L. Ed. 2d 790, 104 S. Ct. 1473 (1984)*, also lends support to Young's argument that this court should exercise jurisdiction over the defendants. Initially, Keeton, the plaintiff, brought suit in Ohio alleging libel; however, the statute of limitations barred her action in Ohio. Thus, the plaintiff filed suit in New Hampshire. *Id. at 772.* The plaintiff was a magazine editor who resided in New York. Hustler Magazine, Inc., the defendant, was incorporated in Ohio with its principal place of business in California. The defendant circulated approximately 10,000 to 15,000 copies of *Hustler* magazine in New Hampshire each month. Keeton claimed that she was libeled in five separate issues of *Hustler* magazine. Id.

In reversing the decision of the lower courts, the Supreme Court concluded that the New Hampshire court could properly assert personal jurisdiction over the defendant publisher without violating the requirements of constitutional due process. The Supreme Court held that the defendant's circulation of its magazine throughout the state of New Hampshire was not "random, isolated, or fortuitous." *Id. at 774.* Therefore, the defendant's contacts with the state was

sufficient to confer jurisdiction upon New Hampshire courts. The Keeton court determined that the "regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine." *Id. at 773.* Ultimately, the Supreme Court held that "the tort of libel is generally held to occur wherever the offending material is circulated." *Id. at 777.* Therefore, it was entirely proper for New Hampshire to exercise personal jurisdiction over the defendants. The Court also determined that the plaintiff's residence played a vital role in determining whether or not to entertain a suit against the defendant in a certain forum. *Id. at 780.* The court believed that the defendant's activities, if focused on the plaintiff's residence, may give rise to the jurisdiction. Id.

Young also relies on the decision rendered in *Calder v. Jones, 465 U.S. 783, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1983).* In Calder, the plaintiff, Shirley Jones, initiated a defamation action against employees of the *National Enquirer* in federal court in California. The *Enquirer*, incorporated in Florida, where all of the defendants resided, had its largest circulation in California. *Id. at 785-786.* In finding proper jurisdiction in California, the Calder court focused on the intentional actions of the writers. The Court concluded that the defendants aimed their activities at California as the defendants knew their article would cause substantial harm or injury to the plaintiff in California. *Id. at 788-90.*

The defendants distinguish the application of these cases and rely on another line of cases involving defamatory materials published on Internet websites. The defendants cite numerous decisions set forth in other jurisdictions. In particular, the defendants rely on the decision set forth in *Schnapp v. McBride, 64 F.*

Supp. 2d 608 (E.D. La. 1998). Similar to the present case, the Schnapp case originated from the publication and circulation of a news article in one state concerning activities occurring in another state. The plaintiff, a New Orleans police officer, sued *The Milwaukee Journal Sentinel* and one of its reporters for a statement published in the newspaper alleging that the officer used a racial slur while on duty. In rendering its decision, the Schnapp court considered such factors as the newspaper having a limited number of subscribers within the state, that it paid no taxes in Louisiana, that it was not listed in any Louisiana phone book, and that it did not advertise in the state of Louisiana. *Id. at 611-612*. In determining whether the exercise of personal jurisdiction was proper in the Schnapp case, the court also examined *The Milwaukee Journal Sentinel's* use of an Internet website to post news articles. The newspaper published and circulated the article concerning the New Orleans police officer on its Internet website. *Id. at 611*. The court held that merely posting information on a website was insufficient to confer jurisdiction in a foreign forum. *Id. at 611*. The court concluded that the plaintiff was not the focal point of the news article which described the policing efforts of other New Orleans police officers. Id. Ultimately, the court determined that personal jurisdiction was not proper in Louisiana under Louisiana's long-arm statute or constitutional due process.

The defendants also rely on the decision set forth in *Roche v. Worldwide Media, Inc., 90 F. Supp.2d 714 (E.D. Va. 2000)*. In Roche, the plaintiff, a citizen of Virginia, claimed that he reserved a specific Internet domain name. The defendant, Worldwide, was a citizen of Florida who owned a domain name identical to the one reserved by the plaintiff. *Id. at 715*. The plaintiff checked the site he reserved to find pornographic materials being maintained by the defendant. *Id. at*

716. Thus, Roche brought suit alleging fraud, negligent misrepresentation and intentional infliction of emotional distress. The defendant claimed that jurisdiction was not proper as it did not sell products or advertise in Virginia. *Id. at 718.* The plaintiff argued that the defendant's use of e-mail and credit card solicitation on the Internet was sufficient to confer jurisdiction over the defendant. Id. To resolve the conflict, the Roche court utilized the "sliding scale" analysis as set forth in *Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997). Roche, 90 F. Supp.2d at 718.*

Zippo's "sliding scale" analysis characterizes Internet websites on a continuum from active to passive. *Id. at 717-718* (citing *Zippo, 952 F. Supp. at 1124).* Utilizing this "sliding scale," the Roche court considered the exercise of personal jurisdiction by examining the level of interactivity and commercial nature of the exchange of information on the Internet website. *Roche, 90 F. Supp.2d at 718.* The court in Roche held that the defendant did nothing more than place information on an Internet website knowing that someone in Virginia might access the site. Therefore, the court characterized the site as passive and held that jurisdiction over the defendant in that case was not proper. Id. In addition, the Roche court refused to extend traditional notions of fairness and justice to meet the indeterminable boundaries prescribed by the Internet. n2

Regarding the question of where acts or omissions conducted in cyberspace actually occur, this court, based on the above cases, must acknowledge that the law in the area of personal jurisdiction based upon an Internet presence is still evolving. As illustrated above, both parties to this action have cited numerous cases to support their arguments. Nonetheless, as stated above, the basic questions before the court are: (1) does the

Virginia long-arm statute allow for the exercise of personal jurisdiction over the defendants? and (2) if so, would the exercise of jurisdiction violate the defendants' due process rights?

The defendants argue that this court cannot properly exercise jurisdiction over them under § 8.01-328(A)(3) of Virginia's long-arm statute. The defendants argue that all of their articles were prepared and published in Connecticut for a Connecticut audience. Further, the defendants argue that none of the writing, reporting or editing of the articles occurred in Virginia. Some of the defendants concede that they made limited telephone contacts with individuals in Virginia, but they assert that they did not visit Virginia while preparing the articles for publication. Therefore, the defendants contend that their activities do not constitute an act or omission within Virginia sufficient to confer jurisdiction under § 8.01-328(A)(3).

While the defendants disagree with Telco's expansive reading of § 8.01-328(A)(3), this court finds the decision in Telco to be instructive. In Telco, the court relied on the decision in First American First where the court determined that the primary and most devastating effects of mailing libelous letters directed at the Virginia plaintiffs would be experienced in Virginia. Id. at 407 (citing *First American First, 802 F.2d at 1517)*. The Telco court refused to distinguish between mailing paper letters and the use of a computer with access to the Internet to read information. Id. at 407. Specifically, the Telco court held, "defamation, like libel, occurs wherever the offensive material is circulated or distributed." Id. at 408.

This court agrees with Telco in that information placed on an Internet website should be subjected to multistate jurisdiction. In the instant case, harm to Young's reputation, if any, occurred primarily in

Virginia, as he is a resident of Virginia. The articles published on the Connecticut newspapers' website were focused on the prison system in Virginia where Young was employed as a warden. The articles mentioned Young or at the very least alluded to Young. The defendants argue that in Telco, unlike the case at hand, the allegedly defamatory statements were posted on Virginia-based servers. Id. at 407. This may be true; however, the defendants activities on the Internet, which were ultimately accessed in Virginia, were not "random, isolated, or fortuitous." *Keeton, 465 U.S. at 773.* Thus, this court concludes that the defendants by posting allegedly defamatory articles on Internet websites accessible twenty-four hours a day in Virginia, conducted an act or omission within Virginia sufficient for this court to confer jurisdiction over them in this case.

The defendants contend that, even if the Virginia long-arm statute provides for the exercise of jurisdiction, the exercise of personal jurisdiction over them by this court would violate their constitutional due process rights because they lack the necessary minimum contacts with the Commonwealth of Virginia. The defendants argue that, unlike the defendants in *Calder v. Jones, 465 U.S. 783, 79 L. Ed. 2d 804, 104 S. Ct. 1482,* they did not intentionally aim their activities toward Young, a Virginia resident. However, this court disagrees with the defendants. Each of the articles published on the newspapers' Internet websites characterized the conditions of the Virginia correctional system, alluded to the Virginia plaintiff or described the plaintiff's office which was located in Virginia. The defendants were all well aware of the fact that the plaintiff was employed as a warden within the Virginia correctional system and resided in Virginia. Therefore, the defendants also should have been aware that any harm suffered by Young from the circulation of these

articles on the Internet would primarily occur in Virginia. See *Calder v. Jones, 465 U.S. at 788-90.*

Relying on the decision in Roche, the defendants also argue that it would be unfair to subject them to worldwide jurisdiction simply because they placed information on the Internet. See *Roche, 90 F. Supp. 2d 714.* Again, this court disagrees. The defendants are all involved in some form or fashion with the news media. Essentially, information is the product offered to the public by these defendants. When such information is posted on the Internet, the product is offered to a worldwide audience, as the use of the Internet defies all geographic boundaries. For example, a person sitting at a computer in rural Southwest Virginia can readily access information across the world without ever leaving his or her chair. Equally true, a reader across the world can access information from and about rural Southwest Virginia without ever leaving his or her chair. Thus, a newspaper article published and circulated on the Internet can essentially be physically "present" in different locations at one time and subjected to multistate jurisdiction.

This court finds instructive a recent decision involving trademark infringement set forth in *Christian Science Board of Directors of the First Church of Christ v. Nolan, 2001 U.S. App. LEXIS 16815, 259 F.3d 209, 2001 WL 845179* (4th Cir. July 26, 2001). In that case, the U.S. Court of Appeals for the Fourth Circuit affirmed a decision previously rendered by a North Carolina district court holding that it could properly exercise personal jurisdiction over the Nolen defendants. The First Church of Christ, Scientist, is a religious organization based in Massachusetts with several branches located in different parts of the world that provides a variety of products for its members. The plaintiffs, members of the board of directors of the First

Church of Christ, Scientist, owned the trademarks displayed on the Church's products. *Nolen, 2001 U.S. App. LEXIS 16815, 2001 WL 845179* at * 1. The defendants, Nolen and Robinson, were dissidents from the Christian Science Church. Nolen, a resident of Arizona, founded the University of Christian Science and established an electronic campus on the Internet to provide and exchange educational information about the teachings of the church's founder. While Nolen, provided the educational content contained on the website, Robinson, a resident of North Carolina, provided technical assistance to Nolen by securing the domain name and posting information on the website. *2001 U.S. App. LEXIS 16815.*

In Nolen, the fundamental question on appeal, and the question most relevant to this court, was whether the defendants' contacts with the forum state were sufficient to support the district court's exercise of personal jurisdiction. *2001 U.S. App. LEXIS 16815* at *2. The court determined that the defendants' contacts with North Carolina were insufficient for the court to exercise general jurisdiction over them. *2001 U.S. App. LEXIS 16815* at *3. Thus, the court centered its analysis around the exercise of specific jurisdiction and concerns of constitutional due process. In doing so, the Court of Appeals examined three factors set forth in Burger King to determine whether the exercise of specific jurisdiction was proper: (1) to what extent did the defendants "purposely avail" themselves of the privileges of conducting activities in the forum state thereby invoking the benefits and protections of the laws of that state; (2) whether or not the present claim arose out of activities related to the forum state; and (3) was the exercise of personal jurisdiction constitutionally "reasonable." Id. (citing *Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 476-77, 85 L. Ed. 2d 528, 105 S. Ct. 2174(1985).*

The defendants argued that the North Carolina court could not properly exercise jurisdiction over them because their activities were not sufficient to satisfy the "purposeful availment" requirement. *2001 U.S. App. LEXIS 16815* at *4. In support of this contention, the defendants argued that Robinson simply volunteered to provide technical assistance to Nolen without being compensated or solicited. The court determined that Robinson's invitation to maintain the website arose from the friendship between the two defendants along with their desire to disseminate religious information, products and services. Id. The court in Nolen determined that both defendants deliberately entered into a collaborative agreement "well aware that potentially tortious content [they] created would be physically uploaded by a North Carolina resident working on a computer in North Carolina." Id. Thus, the court concluded that the defendants' acts were neither fortuitous nor unintentional as to defeat the exercise of personal jurisdiction. Turning to the second inquiry, the court determined that no dispute existed regarding the origination of the claim. Finally, the court analyzed the issue of whether or not it was reasonable to exercise personal jurisdiction. In doing so, the court considered such factors as: "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive policies." Id. (quoting *Burger King, 471 U.S. at 477).*

Ultimately, the court determined that defending a suit in North Carolina was inconvenient for Nolen, but did not offend notions of due process. *2001 U.S. App. LEXIS 16815* at *5. Moreover, the court determined that defending the suit in North Carolina reduced the burden

on Robinson, Nolen's co-defendant. Id. The court also held that North Carolina was a logical forum for the suit as it had an interest in deterring trademark infringement accomplished "by the postings of allegedly infringing materials by a North Carolina resident to a website accessible through a North Carolina-based domain." Id. Thus, the court concluded that the district court's exercise of specific personal jurisdiction over the defendants did not offend the requirements of due process.

This decision also supports the conclusion that the exercise of personal jurisdiction over the defendants in the case at hand does not offend traditional notions of due process. This court determines that the facts of this case, as set forth above, are sufficient to satisfy the first condition of "purposeful availment." The defendants published and circulated articles on their websites concerning the ongoing controversy surrounding the policy of sending Connecticut prisoners to correctional facilities in Virginia. The plaintiff was a warden in the Virginia correctional system. The allegedly defamatory news articles originated from the controversial policy and the plaintiff's relationship to the Virginia correctional system. Like the defendants in Nolen, the present defendants were well aware that any potentially tortious content published and circulated on their websites could be physically uploaded by a Virginia resident working on a Virginia computer. Thus, this court concludes that the defendants' acts were not fortuitous or unintentional. There is also no dispute in this case that the posting of news articles on the Internet gave rise to the present litigation. Thus, the second condition of Nolen is also satisfied. In turning to the question of constitutional reasonableness, this court concludes that the exercise of personal jurisdiction is proper in this case. Similar to the defendants in Nolen, defending a suit in a Virginia court may inconvenience

the Connecticut defendants, but it does not violate traditional notions of due process. Moreover, Virginia has a significant interest in deterring the posting of defamatory materials concerning one of its citizens, especially a citizen employed within the Virginia correctional system, on the Internet. Thus, this court can properly exercise personal jurisdiction without offending traditional notions of constitutional due process.

V. CONCLUSION

This court concludes that the exercise of personal jurisdiction over these defendants is proper under Code of Virginia § 8.01-328(A)(3), as the defendants' Connecticut-based Internet activities constituted an act leading to an injury to the plaintiff in Virginia. Likewise, this court holds that the defendants' Internet activities are sufficient to satisfy the requirements of constitutional due process. Thus, the defendants' motion to dismiss for lack of personal jurisdiction is denied as to all defendants. An appropriate order will follow.

ENTER: This 9th day of August, 2001.

Glen M. Williams

SENIOR UNITED STATES DISTRICT JUDGE

ORDER

For the reasons set forth in the Memorandum Opinion entered this day, it is clear that this court can properly exercise personal jurisdiction over the named Defendants under the Virginia long-arm statute. This court also holds that its exercise of personal jurisdiction over the Defendants in this case does not violate the requirements of constitutional due process. Thus, it is hereby ORDERED and ADJUDGED that the Defendants'

motions to dismiss for lack of personal jurisdiction are hereby DENIED in whole. The Clerk is directed to send certified copies of this ORDER to all counsel of record.

ENTER: This 9th day of August, 2001

Glen M. Williams

SENIOR UNITED STATES DISTRICT JUDGE